

REMARKS

Reconsideration of this application is respectfully requested. Applicant has addressed every ground for rejection in the Office Action dated April 22, 2005 and believes the application is now in condition for allowance.

The present invention relates to a poker game and method for playing the same that allows a player to place an initial wager that the final hand will be a winning hand and to place a second wager, after the initial cards are dealt, that the final hand will contain a specific card combination that is of a higher ranking than the initially dealt cards. In particular, the player places an initial wager that the final hand will contain any one of the preselected winning card combinations. Once the bet is placed, an initial hand of cards is dealt to the player. After the cards are dealt, the player may then elect to place a second wager, which is independent from the initial wager, that the final hand will contain a particular combination of cards that is of a higher ranking than the initially dealt cards. For example, if the initial hand comprises one pair, the player may make a proposition bet that the final hand composition will be of a better ranking than one pair (e.g., three of a kind or two pair). If the final hand contains the particular combination of cards that the player bet on, then the player wins both the initial and second wager. However, if the final hand does not match the particular combination of cards, but does match one of the preselected winning card combinations, then the player will win the initial wager, but lose the second wager.

In response to the Examiner's objection to Claim 13 and proposed change, Claim 13 has been amended to eliminate the word "to" for grammatical reasons.

Claim 14 stands rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as

the invention. In particular, the Examiner stated that there is insufficient antecedent basis for the use of the limitation “said proposition bet”. Claim 14 has been amended to change “said proposition bet” to “one or more of said plurality of proposition bets”. Accordingly, it is respectfully submitted that this rejection is traversed.

Claims 1, 3, 5, 6, 8, 10, 11, 13, 14, 17 and 18 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,416,407 to Carrico et al. in view of Yoseloff U.S. Patent No. 6,227,969. The Carrico patent discloses a multi-draw poker game wherein a player places an original wager and is dealt five cards. The player may then elect to replace certain cards in the hand to create a second hand. If no cards are replaced, the game ends. After the cards are replaced, the player may then elect to place a bet that the cards of a third hand will match a predetermined winning hand that is different than the second hand (if it was a winning hand).

If the cards represent a winning hand, the player may elect to halt play and collect his winnings, or elect to draw additional cards. After the cards are drawn, the player may again elect to either halt play or draw additional cards. If the player elects to draw additional cards, then the player must pay an amount equal to the player's original wager plus an amount equal to any potential winnings the player would have won after the first cards were drawn. In other words, the player must give up a potentially winning hand and potential payoff from an initial winning hand to make the additional wager. [See Col. 6, lines 3-6 (“The player is induced to give up the winning hand and potential payout from that winning hand . . . to make the additional wager . . .”). The player wins if the final hand matches any one of the predetermined winning poker hands (other than the initial winning hand).

A review of the patent application and the prior art indicates that it appears to be a

situation where the relative simplicity of Applicant's invention may lure one into an inappropriate assertion of obviousness. While Applicant readily admits that the general concept of proposition bets was known, Applicant submits that reliance on Yoseloff to modify Carrico improperly involves use of Applicant's specification as a blueprint to combine the references. *See Ex parte Brack*, 134 USPQ 445 (Pat. Off. Bd. App. 1961).

In particular, it is respectfully submitted that the combination of Yoseloff and Carrico do not teach or suggest each of the limitations of the claims in the pending application. Among other things, it is respectfully submitted that Carrico does not teach placing a proposition bet after the initial cards are dealt but prior to replacing the cards. Rather, it only teaches placing a separate wager that supersedes the initial wager after selected cards are replaced from the first hand to form a second hand. Furthermore, Carrico specifically teaches against placing proposition bets by requiring the player to *give up any potential winnings of the second hand* upon placing a second bet. On the contrary, in the present invention, the proposition bet is an additional opportunity for a winning bet.

In order to get around the lack of teaching in the cited references, the Examiner has stated that it would have been obvious to one of ordinary skill in the art to allow a proposition bet after the initially dealt cards and before the final hand as it allows a player to make an educated wager and that it is "[c]ommon knowledge in the art . . . that the player wants every advantage in the game . . . ." However, Applicant respectfully submits that while it may be common knowledge that players want to get every advantage, those in the industry understand that this goes against the principal that the games are designed to give the 'house' the advantage. Otherwise, the house will not generate sufficient income for the game to succeed. In other words, the industry is not

inclined as the Examiner has suggested, to make games that give players the advantage. Additionally, it is submitted that the Examiner's reasoning that the claimed invention would be obvious because a player would be more inclined to play the game is exactly the type of hindsight reasoning that the Federal Circuit has ruled should be avoided as it would use the Applicant's own teaching of its invention to overcome the lack of teaching in the prior art and prohibit the furtherance of the useful arts. See, e.g., *Al-Site Corp. v. VSI Int'l, Inc.*, 50 U.S.P.Q.2d 1161, 1171 (Fed. Cir. 1999) (citing *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed.Cir.1983)) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."); *Winner Int'l Royalty Corp. v. Wang*, 48 U.S.P.Q.2d 1139, 1144 (D.C. D.C. 1998) ("The standard of obviousness is not whether in hindsight, it seems elementary that someone would have combined these certain elements in the prior art to form the invention in question. See e.g., *W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1551, [220 USPQ 303, 313] (Fed. Cir. 1983).

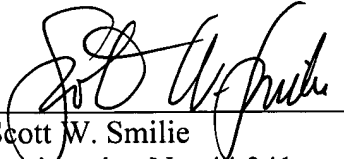
While the Examiner has indicated that hindsight reasoning is proper in this case, as the prior art does not teach or suggest the claimed limitations, and in fact, teaches against the limitations, it is respectfully submitted that the obviousness rejection is improper as it is based upon Applicant's own teaching. For all of the reasons set forth above, it is respectfully submitted that the obviousness rejection should be withdrawn and the claims be allowed to issue.

Should the Examiner discover that there are remaining issues that could be resolved by an

interview, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

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Respectfully submitted,

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